

REMARKS

Claims 1-5, 7-17, 19-49, and 51-58 are pending in the subject application. Claims 1, 2, 49, 57 and 58 are amended. Applicants submit that the amendments herein introduce no new matter, support therefore being found throughout the application and drawings as originally filed (e.g. see published application at [0050], [0053]).

35 U.S.C. §103 Rejections

Claims 1-3, 5, 7-17, 19-49, and 51-58 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 4,175,704 to Cohen (hereinafter "Cohen") and U.S. Patent No. 5,059,188 to Goddard (hereinafter "Goddard"). Applicants respectfully traverse.

Applicants teach a device for the delivery of a substance to the eye. Applicants' device comprises a housing for holding the substance and a non-aerosol, non-electric delivery mechanism comprising a tubular member disposed within the housing, an actuation mechanism positioned at the top of the housing, and at least one outlet port in the actuation mechanism in communication with the tubular member. As set out, actuation of the actuation mechanism delivers the substance from the housing, through the tubular member, through the outlet port, and to the eye in the form of a spray or mist in a substantially horizontal direction. As further set out, the outlet port is sized to deliver the spray or mist to the eye, where the spray or mist has a circular or elliptical shape at a distance between 5 cm and 30 cm away from the outlet port, and the elliptical shaped spray or mist has a height of no greater than 15 mm and a width of no greater than 30 mm.

The Office has previously acknowledge that Cohen does not teach or suggest delivery of a spray or mist with Applicants' dimensions or in an elliptical shape.

The Office, however, points to Goddard as allegedly describing a device with a nozzle hole opening with a diameter of 1-2 mm. The Office then concludes that it would

be obvious to provide Cohen's hole opening with Applicants' claimed range in view of Goddard. Applicants respectfully disagree.

As previously noted, Cohen describes a spraying device for spraying a variety of materials such as paints, varnishes, insecticides, herbicides, lubricants, solvents, and pharmaceuticals (see col. 1, lines 8-14). The device, when designed for delivery to the eye, includes an eye cup 60 (Figs. 7-8) that is mounted to the face so that the spray is directed into the eye. There is no teaching or suggestion by Cohen that the spray could or should otherwise be directed into the eye. Further, there is nothing in Cohen with respect to modification of the spray aperture so as to provide any desired results in the spray delivered by the device.

Goddard, on the other hand, describes a conventional type of eye dropper that delivers a drop of substance through a hole with the aid of gravity.

It is respectfully submitted that one would not look to the design of an aperture in a drop delivery device so as to modify a spray nozzle. For example, as asserted by the Office, Goddard notes that a nozzle opening of 1-2 mm can be used to deliver a drop of material. However, there is absolutely no teaching or suggestion that providing a nozzle opening with a diameter of 1-2 mm will provide a circular or elliptical spray or mist at a distance from the nozzle opening of 5-30 cm, where the elliptical spray or mist has a height no greater than 15 mm and a width no greater than 30 mm. This comes purely from Applicants' disclosure. Further, there is no teaching or suggestion in the cited references that Cohen's nozzle opening could or should be modified to deliver substance to the eye - rather Cohen explicitly relies upon an eye cup for this purpose.

Further, with respect to the Examiner's assertion that the dimensions as claimed may be equivalent to zero, without agreeing with this assertion, Applicants now recite that the outlet port is sized to deliver a circular or elliptical spray or mist, where the circular or elliptical spray or mist has the noted dimensions. It is, thus, clear that the

dimensions could not be zero – otherwise a circular or elliptical shape would not be present.

In view thereof, it is submitted that claims 1 and 57, and all claims dependent therefrom are clearly patentable over Cohen and Goddard. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested. If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105. The Examiner is invited to contact applicant's undersigned representative by telephone at the number listed below to discuss any outstanding issues.

Respectfully submitted,

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